ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
	)	
Rate Regulation	)	

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Viacom International Inc. ("Viacom"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby opposes certain petitions for reconsideration of the Commission's Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking[1] and the Third Order on Reconsideration[2] in the above-captioned proceeding. Viacom opposes, first, NATOA's unwarranted call for Commission reconsideration of its rules allowing operators, fully consistent with congressional intent, to itemize certain PEG-related costs and recover all franchise-related costs. Second, Viacom urges that the Commission

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[1] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Fourth Report and Order and Second Order on Reconsideration in MM Docket No. 92-266, FCC 94-38 (rel. March 30, 1994) ("Fourth Report and Order" or "Second Order on Reconsideration").

[2] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Third Order on Reconsideration in MM Docket No. 92-266, FCC 94-40 (rel. March 30, 1994) ("Third Order on Reconsideration").

again soundly reject the call of telephone interests for superficial regulatory parity in the price cap rules governing the telephone and cable industries, which are in fact very distinct and warrant careful regulatory tailoring.

Viacom, as both an owner of cable systems and a provider of cable program services that span the programming marketplace spectrum,[3] also has great interest in the various emerging proposals for the much-needed substantial enhancement of the Commission's initial efforts to restore

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[3] Viacom's MTV Networks division ("MTVN") owns the advertiser-supported program services MTV: Music Television, VH1/Video Hits One, and Nickelodeon (comprised of the Nickelodeon and Nick at Nite programming blocks). Viacom's wholly-owned subsidiary Showtime Networks Inc. ("SNI") owns the premium program services Showtime, The Movie Channel, and FLIX, and Viacom's wholly-owned subsidiary MTV Latino Inc. owns the advertiser-supported program service MTV Latino, which is distributed domestically and to Latin American territories. In addition, Viacom (either directly through its subsidiary Paramount Communications Inc., or through wholly-owned subsidiaries or affiliated entities) holds partnership interests in the advertiser-supported program services Comedy Central, USA Network, Sci-Fi Channel, and All News Channel, as well as in the regional sports services Prime Sports Northwest and the MSG Network. Viacom also owns Showtime Satellite Networks Inc., which licenses the SNI, MTVN and a variety of third-party program services to owners of home television receive-only earth stations nationwide. Further, Viacom also owns cable systems serving approximately 1.1 million subscribers and is engaged in: television and radio broadcasting; the production and licensing of syndicated and network television programming and interactive media; the production, distribution and exhibition of theatrical motion pictures; the ownership and operation of professional sports franchises; the ownership and operation of amusement parks and arenas for live entertainment; the publication and distribution of educational, business and trade books; and the licensing and merchandising of trademarks.

marketplace incentives for robust investment in cable program services. Viacom has previously commented at length on this important issue and intends to provide soon its further comments in response to the Commission's outstanding Fifth Notice of Proposed Rulemaking, supra.

I. THE COMMISSION SHOULD RETAIN ITS SOUND INTERPRETATION OF THE ACT'S PROVISION FOR ITEMIZATION OF PEG-RELATED COSTS AND RECOVERY OF FRANCHISE-RELATED COSTS

The Commission's Third Order on Reconsideration properly classified as PEG-related, and therefore itemizable on subscriber bills pursuant to Section 622(c)(2), costs required under a franchise agreement for support of institutional networks, free wiring of public buildings, provision of special municipal video services and voice and data transmission.[4] Petitioner NATOA, having previously objected to classification of such costs as franchise fees, now objects to itemization of the costs of these services on the ground that the services are not necessarily related to the support or use of PEG channels.[5] Itemization of such PEG-related costs is warranted under the Act and should not be modified to conform to NATOA's overly constrained interpretation.

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[4] Third Order on Reconsideration at ¶ 144.

[5] Petition for Reconsideration and Clarification by NATOA, et al. in MM Docket No. 92-266 (May 16, 1994) ("NATOA").

The Commission has previously cited and duly followed the clear legislative intent of this statutory provision, which out of both fairness and a desire to promote political accountability allows operators to itemize, inter alia, the otherwise hidden costs of franchise fees and PEG-related costs imposed by franchise authorities. The Commission soundly concluded that "to the extent a franchising authority imposes special costs not of benefit to all subscribers in consideration of the award or renewal of a franchise, these may be included in an itemization as either a franchise fee or PEG cost, as appropriate under the precedents."[6] The Commission thus recognized that the right to itemize the above-referenced costs of particular municipal benefit is beyond question, and only the question of which category to attribute such costs to -- franchise fees or PEG-related costs -- depended on the specific facts involved.

In the vast majority of cases where the operator provides such municipal benefits along with PEG channels, the costs are indeed logically itemized as PEG-related since the service would support, at least to some degree, PEG channels. NATOA has failed to advance an argument that would justify a different conclusion or refute the clear legislative mandate

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[6] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5968 (1993) ("Report and Order").

that, in any case, these distinctly municipal costs should -- one way or another -- be subject to itemization.[7]

On a closely related issue, NATOA also advances its previously proposed definition of "franchise-related costs",[8] seeking to include "only new or additional direct monetary costs specifically enumerated by a stated dollar amount in a franchise agreement to satisfy franchise requirements imposed by the franchising authority, or specifically attributable to a specific new or additional franchise requirement."[9]

The Commission should reject this proposal for several reasons. The Commission has reasonably identified the costs of complying with specific franchise requirements that exceed federal technical and customer service standards as franchise-related costs warranting external treatment.[10]

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[7] NATOA argues that costs incurred in satisfying franchise requirements for institutional networks, the wiring of public buildings, and municipal video, voice and data services are not always -- although, it implicitly concedes, they are usually -- properly classified as PEG-related. In NATOA's atypical hypothetical where a franchise requires an operator to provide free basic service to public buildings but does not require PEG channels, such costs could instead be itemized as franchise fees.

[8] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428 (released August 27, 1993) at ¶ 99 ("First Order on Reconsideration").

[9] NATOA at p. 6.

[10] First Order on Reconsideration at ¶ 102.

This ruling is premised on the accurate assumption that external treatment of such costs will ensure that franchising authorities "work cooperatively" with operators to assess the costs and benefits of various franchise requirements.[11] Thus, contrary to the suggestion of NATOA, costs incurred pursuant to such a consensual process would not constitute "unwarranted surcharges",[12] but rather fair remuneration for the cost of obligations imposed by the franchising authority.

Moreover, NATOA's proposed definition is fatally flawed. First, as NCTA has persuasively argued, there is no justifiable distinction between franchise-related costs represented by a specifically enumerated dollar amount and other required, but not expressly quantified expenditures.[13] Second, NATOA's proposed definition -- limited as it is to new or additional franchise requirements -- would apparently preclude external treatment for the cost of complying with any existing franchise requirement lacking a stated dollar amount. Such a definition is clearly contrary to the 1992 Cable Act, which includes no such limitation.[14] Viacom submits that the Commission's existing definition of

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[11] Id.

[12] NATOA at p. 4.

[13] See First Order on Reconsideration at ¶ 100.

[14] See 47 U.S.C. § 543(b)(4).

"franchise-related costs" is sufficient and should be retained without modification.

II. THE COMMISSION SHOULD AGAIN REJECT THE TELEPHONE COMPANY MANTRA OF ARTIFICIAL PARITY IN PRICE CAP RULES FOR THE DISTINCT TELEPHONE AND CABLE SERVICES

Viacom urges the Commission to reject telephone companies' insistent calls for artificial parity in the distinct regulation of telephone and cable service. Petitioner Bell Atlantic again advances the argument that the Commission should eliminate apparent disparities between the industries with regard to price cap rules and rules governing the cost of equipment.[15] Attaching a previously filed petition for reconsideration of the Commission's initial Report and Order in this proceeding,[16] Bell Atlantic states that the FCC has not addressed its parity arguments. Contrary to these assertions, however, the Commission has indeed considered, and rejected, petitioner's facile arguments for parity.

In the First Order on Reconsideration, the FCC succinctly stated that "[t]elephone companies have failed to advance a sufficient reason why we should adopt as an

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[15] Petition of Bell Atlantic for Further Reconsideration in MM Docket No. 92-266 (May 16, 1994) at pp. 1-6.

[16] Petition of Bell Atlantic for Limited Reconsideration in MM Docket No. 92-266 (June 21, 1993).

overriding policy goal achieving regulatory parity."[17] This conclusion, the Commission explained, was warranted by the fact that its regulations for the respective industries are, and should be, based on considerations unique to each industry. Hence, distinctions in the regulations governing the two industries are logical, and indeed, necessary. Accordingly, Bell Atlantic's resubmission of arguments already rejected by the Commission should be summarily rejected.

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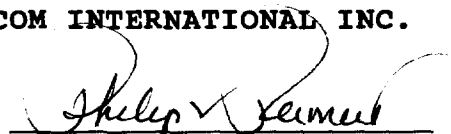
[17] First Order on Reconsideration at ¶ 90.

III. CONCLUSION

Viacom respectfully urges the Commission to reject the NATOA and Bell Atlantic reconsideration requests on the basis set forth above.

Respectfully submitted,

VIACOM INTERNATIONAL INC.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 1994, I caused copies of the foregoing "Opposition of Viacom International Inc." to be mailed first class mail, postage prepaid, to the following:

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